

(718) 786-4000



25-61 49TH AVENUE, LONG ISLAND CITY, NY 11101-4429

**COMMERCIAL TRUCK LEASING  
DAILY—WEEKLY—YEARLY**

TRUCK LEASE AND SERVICE AGREEMENT  
March

THIS AGREEMENT is made as of the 19 day of MARCH, 1999 between PUBLIC SERVICE TRUCK RENTING, INC., having a place of business at 25-61 49th Avenue, Long Island City, New York 11101-4429 (hereinafter called PUBLIC SERVICE) : Sheldon Electric, Inc. and 25-61 49th St. Long Island City, NY 11101

and 42-14 Crescent St, Long Island City, NY 11101  
whose address is (hereinafter called the LESSEE)

(hereinafter called the LESSEE)

1. **PROPERTY COVERED AND TERM:** Public Service agrees to lease to Lessee and Lessee agrees to lease from Public Service the Vehicle(s) and other equipment (herein "Vehicle(s)") described in each Schedule A now or from time to time hereafter executed by the parties and made a part of this Agreement. Execution of a Schedule A by the parties shall constitute Lessee's authorization to Public Service to acquire the Vehicle(s) described on such schedule for lease to Lessee. This Agreement shall become effective with respect to each Vehicle upon the date said Vehicle is placed in the service of Lessee, or 48 hours after the date Public Service notifies Lessee that said Vehicle is available for delivery whichever occurs first and shall continue for the term specified on Schedule A unless terminated earlier as provided hereinafter. Any Vehicle(s) ordered by Public Service pursuant to Lessee's instructions are subject to this Agreement in the event of a termination of this Agreement prior to delivery of such Vehicle(s). Upon expiration or termination of this lease, Lessee will promptly return each Vehicle to Public Service's facility, unless Lessee shall have purchased the Vehicle as provided hereinafter, together with all accessories furnished by Public Service in the same condition and appearance as when received, ordinary wear and tear alone excepted.

Lessee shall have purchased the Vehicle(s) as described herein, and the same shall conform to the specifications set forth herein, and shall appear as when received, ordinary wear and tear alone excepted.

Retention and/or use of a Vehicle In service constitutes an acknowledgment that the Vehicle complies with Lessee's specifications. Lessee agrees to pay upon receipt of invoice for any structural alteration, special equipment, thereafter required by Lessee, or any anti-pollution, safety, or other devices, including installation expenses, and cost of maintenance, or modification of new or existing equipment, required to be installed or effected on any Vehicle(s) leased hereunder by federal, state, or local laws or regulations. Structural alterations may not be made without Public Service's prior written consent.

Lender hereby assigns to Lessee all its interest in the Vehicle(s) leased hereunder, or any part thereof, and in connection therewith may, as security give the lender an

Public Service may finance the property leased hereunder, or any part thereof, and in connection therewith may, as security give the lender an installment sales instrument, mortgage, or security agreement covering such property or an assignment of rentals due hereunder. The lessee shall be subordinate to any sales instrument, chattel mortgage, security agreement or the like.

It is agreed that any delay in delivery in the Vehicle(s) described herein shall not be considered a breach or default on the part of Public Service and that Lessee's sole remedy in the event of late delivery of said Vehicle(s) is the elimination of any rental or other charges due under this lease, for the Vehicle(s) described in Schedule A for the period during which the said Vehicle(s) is not delivered or otherwise supplied.

**2. USE AND OPERATION OF VEHICLES:** The Vehicle(s) leased hereunder will be used and operated by Lessee (and Lessee only) in the normal and ordinary course of Lessee's business, not in violation of any law, rule, regulation, statute or ordinance promulgated by any public body (including legal weight limitation), and Lessee shall indemnify and hold Public Service harmless from and against any and all fines, forfeitures, seizures, confiscations and penalties arising out of any such violation. The Vehicle(s) shall be used by the Lessee on Monday thru Saturday only. It is understood that the Vehicle(s) shall operate within the limits of the law and not more than ten (10) hours per day. It is understood that the Vehicle(s) shall operate within the

The Lessee agrees to use the Vehicle(s) not more than ten (10) hours per day. It is understood that the Vehicle(s) shall operate within the radius as specified in Schedule A.

The party designated on Schedule A agrees to store these Vehicle(s) at the location specified on Schedule A and the Lessee agrees to return the Vehicle(s) to this address each night. If the Lessee provides storage, Lessee agrees to do so at no charge to Public Service and shall pay for the storage of the Vehicle(s) at a location of Lessee's choice, including but not limited to, storage, self storage, off street in a protected area.

any damage to the Vehicle(s) because of failure to provide adequate and proper storage, or theft, in a storage facility, shall be conclusively presumed to be the fault of the Lessee and its drivers shall report any and all faulty operations or other trouble with respect to any and all Vehicle(s) no later than the date of occurrence in writing on forms provided by Public Service. Except and until so reported, it shall be conclusively presumed that said Vehicle(s) are in good repair, mechanical and operating condition.

are in good repair, mechanical and operating condition.

Where a tractor or truck leased hereunder is operated by Lessee with a trailer or other equipment not included under any Schedule A, hereto, or not maintained by Public Service under a separate agreement, Lessee warrants that such trailer will be in operating condition and notwithstanding any other provision of this lease Lessee will indemnify and hold Public Service harmless against any claim or loss or damage resulting from Lessee's failure to properly maintain said trailer or equipment.

3. REPAIR AND MAINTENANCE: Public Service shall:

**3. REPAIR AND MAINTENANCE:** Public Service shall:

A. Provide from Public Service facilities oil, lubricants, tires, tubes and all other operating supplies and accessories necessary for the proper and efficient operation of the Vehicle(s).

B. Maintain and repair the leased Vehicle(s) and furnish all labor and parts which may be required to keep the Vehicle(s) in operating condition.

C. Paint and letter the Vehicle(s), according to Lessee's specifications, at the time they are put into service, subject to the allowance as set forth in Schedule A. Additional repainting and/or lettering requested by Lessee during the term of this lease including repainting or relettering necessary to remove graffiti or delacement shall be at the sole cost of Lessee.

D. Provide road service due to mechanical and tire failure.

E. Wash the Vehicle at Public Service's facility.

E. Wash the Vehicle at Public Service's facility.  
Lessee agrees not to cause or permit any person other than Public Service or persons expressly authorized by Public Service to make repairs or adjustments to Vehicle(s), governors and other accessories. In all cases where repair of Vehicle(s) is necessary, Lessee shall notify Public Service by the speediest means of communication available, and shall abide by Public Service's decision concerning repairs. Public Service will not be responsible for any repair or service while such Vehicle is away from Public Service's facility, unless expressly authorized by Public Service in writing and unless Lessee submits an acceptable voucher of the repair or services itemizing the cost of labor and materials.

Lessee agrees to return each Vehicle to Public Service for service and maintenance at the facility stated on Schedule A or such other facility as Public Service may from time to time notify the Lessee of in writing, for a minimum of eight consecutive hours each month during Public Service's normal business hours at such scheduled time as is designated by Public Service, or otherwise agreed to in writing by the parties. Lessee shall cause it's driver's to check oil and coolant levels and tire pressure on a daily basis. Lessee shall be responsible for all damages incurred to any Vehicle as a result of operating the Vehicle while the level for oil, or water, or radiator coolant, or air pressure in tires is below that of the manufacturer's recommendation.

**4. SUBSTITUTION AND ADDITIONAL VEHICLES:** Public Service agrees to furnish a substitute Vehicle at no extra charge for any leased Vehicle, other than those excepted below, which may be temporarily inoperable because of mechanical failure, the substitute to be as nearly as practicable the same size and appearance as the leased Vehicle, except that no special painting, lettering, or other alterations need be made on the substitute Vehicle. The substitute shall be furnished to Lessee whenever possible at the place at which the Vehicle was disabled and shall be returned promptly to Public Service on notice that the disabled Vehicle has been repaired. Any Vehicle not so returned within 24 hours of such notice shall be deemed an additional Vehicle. The substitute Vehicle, while in the service of Lessee, shall be subject to all the terms and conditions of this Agreement. Public Service shall have no obligation to furnish a substitute Vehicle if the inoperable leased Vehicle is out of service because of damage resulting from collision or upset or is specialized, or carries a truck body not owned by Public Service or is out of service for repair or maintenance of special equipment or accessories for which Public Service is not responsible, or is of a type Public Service does not have in its rental fleet. Failure of Public Service to furnish a substitute Vehicle within a reasonable time, where it is obligated hereunder to do so, shall cause the charges of the inoperable Vehicle to abate until it is returned to Lessee's service or until a substitute is tendered to Lessee; and the liability of Public Service in the event of any such failure shall be restricted to the abatement of the charges of the inoperable vehicle. While a leased Vehicle is out of service because of damage resulting from collision or upset, Public Service will, at the request of the Lessee, rent Lessee a replacement Vehicle, if available from Public Service's rental fleet, at a rental rate equal to the charges applicable to the inoperable Vehicle. Irrespective of whether or not Lessee rents a Vehicle from Public Service while a Vehicle is out of service for repair of damage resulting from collision or upset, the charges applicable to the out of service Vehicle shall not abate. Public Service shall incur no liability to Lessee of any kind or nature whatsoever, whether for loss of driver time, loss of business or profit, or any other damage or claim of damage whether or not of a kind or nature listed herein, for failure to supply any Vehicle, or Vehicle(s), equipment or substitute therefor.

At Lessee's request, Public Service will supply additional Vehicle(s) (other than replacements for inoperable Vehicle(s)) for temporary use upon

EXHIBIT 1

the terms, conditions and limitations set forth in this lease, providing Public Service has available sufficient Vehicle(s) of the size and type requested at the Public Service facility which services Lessee. Public Service shall not be required to letter or paint such Vehicle(s), or make any alterations with respect to such additional Vehicle(s). The rental charge to be paid by Lessee to Public Service for use of such additional Vehicle(s) shall be Public Service's prevailing rental charges (fixed charges and mileage charges) for such Vehicle(s) in effect at the Public Service location from which such Vehicle(s) are obtained, less Ten Percent (10%).

#### 5. ADJUSTMENT OF CHARGES:

A. The parties recognize that the charges provided for in this Agreement are based on Public Service's current cost of labor, parts and supplies. The cost of Public Service's operation may fluctuate after the date of execution of this Agreement. Lessee agrees that for each rise of two index points in the Consumer Price Index, as published by the U.S. Bureau of Labor Statistics (for Urban Wage Earners and Clerical Workers, New York-Northeastern New Jersey) using a 1967 base year, above the base index figure on Schedule A hereto, the fixed lease charge and mileage charge for each Vehicle, including excess mileage charges and those charges stated in the Mileage Guarantee, if any, shall be adjusted upward on trucks, tractors, and trailers in an amount equal to 1% of the fixed charge, and 1% of the basic mileage charges, all as set forth in Schedule A.

B. Any and all subsequent adjustments for Vehicles shall be based on the charges stated on Schedule A. Adjustments in charges shall be effective on the first day of each calendar quarter (¼ year period) and will be based on the latest index which has been published prior to such effective date. In the event the Consumer Price Index should be discontinued, another cost adjustment index to adjust charges shall be selected by Public Service based upon data published by an agency of the U.S. Government or local government or by a financial periodical or authority.

C. Lessee agrees to pay for (1) any sales or use tax now or hereafter imposed upon the use of the Vehicle or on the rental or other charges accruing hereunder, (2) any increase in license or registration fees, including federal highway use tax, Vehicle inspection fees, and personal property tax rates, (3) any new or additional tax or governmental fee, adopted after the date of the execution of the applicable Schedule A by Lessee, upon the fuel provided by Public Service.

6. **LICENSES:** Public Service agrees to provide or pay for the State Motor Vehicle Registration for the licensed weight shown on Schedule A, and Personal Property Taxes for each Vehicle in the State of its domicile, at the rates and method of assessment in effect on the date of execution of the applicable Schedule A. When permitted by law, Public Service will apply for such other Vehicle licenses, prorate or state reciprocity plates as Lessee may from time to time request, provided that any cost of same shall be borne by Lessee.

Lessee agrees to pay for any special license which may result from the operation and use of the Vehicle(s) by Lessee including mileage taxes, ton mileage taxes, highway or bridge tolls. Public Service shall have the right to pay or discharge any lien or encumbrance asserted against any leased Vehicle as a result of Lessee's failure to pay any claim assessment for any such taxes and Lessee shall promptly reimburse Public Service for any such payment.

7. **CHARGES:** The total rent for each Vehicle shall be payable without deduction or offset upon presentation of a bill. Punctuality in the payment of the rental stipulated shall be of the essence in this Agreement. Public Service may, at its option, bill Lessee on a weekly or monthly basis and all charges shall be applicable to such period. Lessee shall pay to Public Service the amount of such invoice within 7 days after receipt thereof and such invoice shall be conclusively presumed to be correct unless the correctness thereof is protested in writing to Public Service within 5 days after receipt of such invoice by Lessee.

In the event that Lessee defaults in the prompt and timely payment of rent or additional rent as herein provided or in the performance of any of the terms, covenants and conditions of this Agreement, Public Service may immediately retake possession of the motor Vehicle(s) herein, without further notice to the Lessee either with or without legal proceedings.

The setting forth herein of any particular remedy shall not preclude Public Service from any other remedy available to Public Service at law nor shall the exercise of any one remedy preclude any other, nor shall the failure of Public Service to exercise any right or remedy provided in this Agreement or at law be deemed or any way constitute a waiver, estoppel, or the like, by Public Service to enforce or exercise such right or remedy thereafter.

Mileage shall be determined from odometer and/or hubodometer readings. If the mileage odometer and/or hubodometer shall fail to function on any Vehicle, the mileage of the said Vehicle shall be determined at Public Service's option upon its average mileage during the preceding 30 days; Lessee's trip records; or the amount of fuel consumed and miles per gallon record of Public Service for the Vehicle.

Odometer and/or Hubodometer failure shall be promptly reported to Public Service in writing. Lessee shall at the request of Public Service, promptly furnish Public Service with a current odometer and/or hubodometer reading for any Vehicle.

Lessee shall pay estimated rental charges in advance as detailed in Schedule A upon the signing of this Agreement. This amount, and interest earned shall be applied against the last weeks charges under this Agreement unless Lessee shall have defaulted in the performance of any of its obligations under this Agreement in which case such advance rental and accrued interest, if any, may be applied by Public Service against such obligations. Accrued interest will first be applied against any unpaid late charges.

Acceptance by Public Service of any late rental payment or partial rental payment shall not be considered as a waiver by Public Service of its right to prompt and full payment of full charges due under this lease. Said waiver shall not be construed as a consent to present or future late or partial payment.

8. **DRIVERS:** A. Lessee agrees to cause each Vehicle to be operated only by a safe, careful driver, who shall be properly licensed, at least 21 years of age, and who shall be the employee or agent of Lessee only, paid by and subject to its exclusive direction and control. Lessee agrees to reimburse Public Service in full for loss or damage to the Vehicles leased hereunder, including related expenses, if such Vehicle(s) are operated by drivers under 21 years of age. Upon receipt of a written complaint from Public Service specifying any reckless careless or abusive handling of the Vehicle or any other improper use by or of any driver, and requesting his removal as a driver of Public Service Vehicle(s), Lessee will immediately remove such individual as a driver of any Vehicle leased hereunder. If after a request from Public Service to remove such driver Lessee shall fail to do so, or shall be prevented from so doing by any Agreement with anyone on the driver's behalf:

(1) Lessee shall, notwithstanding any other remedies of Public Service or provisions of this Agreement, reimburse Public Service in full for any loss and expense sustained by Public Service for damage to any Vehicle when being operated by such individual and Lessee shall release, indemnify and otherwise hold Public Service completely harmless from and against any claim or causes of action for death or injury to persons or loss or damage to property arising out of the use or operation of any vehicle when being operated by such individual notwithstanding that Public Service may be designated on applicable Schedule A as responsible for furnishing and maintaining liability insurance, and (2) Public Service may at its election, and at any time thereafter upon 30 days prior written notice to Lessee, terminate any liability insurance coverage provided by Public Service hereunder, and may, at its election, with respect to each Vehicle, increase the amount of Lessee's physical damage responsibility to an amount equal to the agreed value calculated in accordance with Article 10 as of the time of damage or loss.

B. Lessee authorizes Public Service to investigate the driving record of each driver and test such driver with respect to his ability to operate any Vehicle covered by this lease to which he will be assigned without prejudice to any right or remedy of Public Service hereunder.

C. Lessee agrees that the vehicles will not be operated by a driver in possession of or under the influence of alcohol or any drug which may impair his ability to operate the Vehicle, or in a reckless or abusive manner, or on a flat tire, or in a manner to cause side wall damage to a tire, or to transport passengers, other than drivers helpers in the employ of Lessee, or improperly loaded, or loaded beyond the manufacturer's recommended maximum gross weight shown on Schedule A. Notwithstanding any other provision of this Agreement, Lessee agrees to reimburse Public Service in full for damages, including expenses, resulting from a violation of this provision. Lessee will be responsible for all expenses of towing or removal of any mired Vehicle (whether in snow, mud, or off of paved surface) when not in Public Service's possession or on Public Service's premises. Road service required by driver negligence (including but not limited to running out of fuel) will be provided by Public Service and the cost charged to Lessee.

D. Lessee shall neither use nor allow any Vehicle covered by this lease to be used for transportation of any property or material deemed extra hazardous by reason of being flammable, explosive or flammable, or to tow, push or otherwise propel any other Vehicle or object, nor shall Lessee use or allow any Vehicle covered by the lease to be used for the transportation of any property or material in violation of any Federal, State, or local statutes, ordinances, rules or regulations, or for any illegal purpose, or for the purpose of transporting contraband and material. (Public Service shall have the right to terminate this agreement for failure to comply with this article and in such event, Public Service shall be entitled to the remedies provided by in Article 11).

9. **INSURANCE:** A. Liability Insurance Responsibility: A Standard policy of automobile liability insurance for the Vehicle(s) leased hereunder, and any additional or substitute Vehicle(s), (hereinafter referred to as liability insurance) with limits as specified in each Schedule A shall be furnished and maintained in full force and effect by the party designated on Schedule A at its sole cost and expense, written by a company or companies satisfactory to Public Service for any liability arising out of the ownership, maintenance, use, control, or operation of the Vehicle(s). Such policy shall provide that the coverage afforded cannot be cancelled or materially altered without 30 days prior written notice to both Public Service and Lessee. The party whose duty it is to maintain such insurance shall deliver to the other party such certificates as are necessary to evidence its compliance with the provisions of this Article. If insurance is provided by Lessee, the policy shall name Public Service as a named insured.

If Public Service provides the insurance, it is agreed that in the event the insurance premium rates shall increase during the term of this Agreement, then in such event the charges for the Vehicle(s) leased hereunder shall be adjusted upward to reflect such change immediately upon Public Service's notification to the Lessee of such increase. During the term of this Agreement upon not less than 30 days prior written notice to Lessee, Public Service shall have the right to terminate any liability coverage procured and maintained by Public Service.

Public Service may terminate liability coverage on less than 30 days notice if insurance is terminated, cancelled or the like by the insurance company insuring the Vehicle(s). In that event termination shall correspond to the termination date specified by the insurance company and Public Service shall send such notice as soon as practicable after receipt of such notice from the insurance company.

In the event Public Service terminates liability insurance coverage, Lessee shall be obligated to procure and maintain the liability insurance in the limits set forth on Schedule A from and after the effective date of such termination and each of the rental rates specified on Schedule A shall be adjusted accordingly, as set forth in Schedule A.

If Lessee is obligated to procure and maintain liability insurance hereunder and shall fail to do so, or shall fail to furnish Public Service the required evidence of such insurance, as and when required, Lessee shall indemnify and hold Public Service harmless from and against any claim or causes of action for death or injury to persons or loss or damage to property arising out of or caused by the ownership, maintenance, use, control, or operation of any Vehicle leased hereunder, and Public Service is authorized, but not obligated, to procure such a policy of insurance, without prejudice to any other remedy Public Service may have hereunder, and Lessee shall pay to Public Service as additional rent the amount of the premium paid by Public Service for such policy.

Lessee agrees to release, indemnify, and hold Public Service harmless from and against any claims or causes of action for death or injury to persons, or loss or damage to property in excess of the limits of liability insurance provided for herein, whether provided by Public Service or Lessee as indicated on Schedule A, arising out of or caused by the ownership, maintenance, use, control, or operation of any Vehicle leased or furnished hereunder, and any such claims or causes of action which Public Service shall be "required to pay." Any voluntary settlement paid or calling for payment by or on behalf of Public Service with respect to such claims or causes of action, regardless of whether or not judgment has been entered against Public Service, shall be deemed to be payments which Public Service is "required to pay."

Lessee further agrees to release indemnify and hold Public Service harmless for death or injury to Lessee, Lessee's employees, drivers, passengers or agents, arising out of the ownership, maintenance, use, control, or operation of any Vehicle leased or furnished hereunder.

**B. Physical Damage Responsibility:** The party designated on Schedule A shall pay for loss or damage to any Vehicle subject to the following:

(1) In the event Public Service is designated:

(a) Public Service will pay for loss or damage to each Vehicle in excess of the amount specified on Schedule A EXCEPT (1) any willful damage to the Vehicle arising out of or in connection with any labor dispute; (2) conversion of any Vehicle by an agent or employee of Lessee which shall not be considered theft within the terms of this provision; or (3) the loss by theft of tools, tarpaulins, batteries, accessories, spare tires and other such appurtenances; (4) Loss or damage by operation of any Vehicle during periods of riot or civil commotion; (5) loss or damage caused by such negligence, carelessness, or abusive handling of the Vehicle by Lessee including, but not limited to Lessee's or its agents or employee's gross negligence, carelessness, or abusive handling of the Vehicle while unattended, collision with the structure of any underpass, bridge or other object failure to remove Vehicle's ignition keys from the Vehicle while unattended, vandalism or malicious mischief; (6) all towing charges. Lessee shall pay up as a result of insufficient clearance, whether of height or width, and vandalism or malicious mischief; (6) all towing charges. Lessee shall pay up to the amount specified on Schedule A as deductible (exclusive of towing charges), for loss or damage to any Vehicle, including related expenses, from each occurrence and shall pay for all loss or damage to any Vehicle resulting from any perils specifically not assumed by Public Service herein.

(b) Upon not less than 30 days prior written notice to Lessee, Public Service shall have the right (1) to terminate any physical damage coverage procured and maintained by Public Service and (2) to increase Lessee's Physical Damage Responsibility to an amount with respect to each Vehicle equal to the agreed value of such Vehicle computed in accordance with Article 10 as of the time of damage or loss, and each of the charges for coverage specified on Schedule A, including those stated in the Mileage Guaranty, if any, shall be adjusted accordingly.

(c) In the event Public Service terminates physical damage coverage, Lessee shall be obligated to procure and maintain physical damage coverage acceptable to Public Service and each of the charges shall be adjusted accordingly. Lessee agrees to furnish Public Service certificates necessary to evidence compliance with this paragraph.

(d) If Lessee is obligated to procure and maintain physical damage coverage and fails to do so, or fails to timely furnish Public Service with evidence of such coverage, Lessee agrees to reimburse Public Service all its loss, cost and expense resulting from loss of or damage to the Vehicle(s) or any Vehicle being used as a substitute therefor.

(2) In the event Lessee is so designated:

(a) Lessee will pay for all loss, theft, or damage to any Vehicle specified in Schedule A or any Vehicle being used as a substitute therefor, including related expenses arising from any cause, but Lessee's liability shall not exceed the purchase price of the damaged Vehicle computed according to the provisions of Article 10 at the time of such loss or damage (exclusive of all towing charges). As to substitute Vehicle(s) or additional Vehicle(s), Lessee will reimburse Public Service Fair Market Value (retail) as determined by latest published data.

(b) Lessee further agrees to furnish Public Service with a policy of insurance acceptable to Public Service with Public Service as a named insured or endorsed as a loss payee having a deductible amount not to exceed the amount specified on Schedule A, failing in which, Public Service may obtain such insurance and add the cost thereof pro rata to the charges for the Vehicle(s).

**C. Notice of Accident:** Lessee agrees to notify Public Service immediately upon the happening of any accident or collision (regardless of insurance responsibility) involving the use of a Vehicle by the speediest means of communication available and to cause the driver to make a detailed report in person at Public Service's office within 48 hours and to properly render all other assistance to Public Service and the insurer that is requested by either of them in investigation, defense or prosecution of any claims or suits. Lessee shall do nothing to impair or invalidate any applicable insurance coverage.

**D. Cargo Insurance & Accessories:** Lessee agrees to release and hold Public Service harmless from liability for loss or damage to any goods or other property in or carried on any Vehicle whether such loss or damage occurs in Public Service's facility or elsewhere. Lessee shall, at its sole expense, include Public Service as a named insured in any and all cargo or transportation or floater insurance policies covering Lessee with respect to any loss or damage to such goods or property. Lessee waives any legal right of recovery against Public Service for any such loss or damage.

**E. Vehicle Theft or Destruction:** If a Vehicle is lost or stolen and remains so for 30 days after Public Service has been notified, the lease as to such Vehicle shall then terminate provided all charges for such Vehicle have been paid to that date and provided any amounts due Public Service pursuant to Paragraph 9B have been paid. Public Service shall not be obligated to provide a substitute Vehicle during said 30 day period. If a Vehicle is, in Public Service's opinion damaged beyond repair, Public Service shall notify Lessee within 30 days after Public Service has been advised of the loss. Upon receipt of Public Service's notice that the Vehicle has been stolen or damaged beyond repair provided all charges for such Vehicle have been paid to that date and provided any amounts due Public Service pursuant to Paragraph 9B hereof have been paid, the lease as to such Vehicle shall then terminate. However, Public Service does reserve the right to provide Lessee with a substitute, new or used, Vehicle for the balance of the term remaining and in that event the lease as to such Vehicle shall remain in full force and effect.

**10. TERMINATION:** This Agreement may be terminated by either Public Service or Lessee at each annual anniversary of the delivery date in service of any Vehicle(s) described in this Agreement upon sixty (60) days' prior written notice to the other party of its intention to terminate. In the event either party shall so elect to terminate as to any or all Vehicles subject to this Agreement, the Lessee shall at the option of Public Service purchase the Vehicle or Vehicle(s) with respect to which such option to terminate is exercised. Alternatively, in lieu of purchasing a Vehicle, the Lessee may elect to pay to Public Service the difference, if any, between the purchase price as calculated pursuant to Schedule A and the fair market value of each such Vehicle as of the date of the termination (the alternative payment). The aforesaid market value of any Vehicle(s) covered by this Agreement shall be the highest appraisal of market value (wholesale) received by Public Service from two or more independent Vehicle dealers.

The purchase price of each Vehicle, if the Lessee so elects to purchase, shall be the depreciated value thereof as of the date of termination, provided, however, that the purchase price to be paid by the Lessee for any Vehicle as to which this agreement is terminated shall not be less than fifteen (15%) of its original value as set forth in Schedule A. The depreciated value shall be an amount equal to the original agreed value of said Vehicle as set forth in Schedule A, less an amount computed by multiplying the depreciation per week as set forth in Schedule A by the number of weeks the Vehicle has been in service prior to the effective date of termination.

Lessee shall simultaneously pay all outstanding liens, charges through the date of purchase of each Vehicle (or the date the alternative payment is made by Lessee), together with applicable sales taxes and that portion of all license, registration fees, prepaid expenses, etc. paid by Public Service with respect to said Vehicle. Lessee shall additionally be responsible for all other negative tax consequences to Public Service arising from the purchase or alternative payment. Upon receipt of payment or alternative payment, Public Service shall convey to Lessee title to such Vehicle. Each Vehicle is to be purchased as is and where is and without any warranty expressed or implied with respect to any matter whatsoever, and Lessee shall at its own cost and expense remove all names, insignia and trademarks identifying such Vehicle as a Public Service Vehicle.

Lessee may make no cancellation or termination of this lease if Lessee shall then be in default hereunder. No cancellation or termination of this lease by either party shall be deemed in any way to relieve Lessee of its liability for the payment of any and all sums due to Public Service under this lease or any damages which Public Service shall have sustained by reason of Lessee's breach.

**11. BREACH OF AGREEMENT:** In the event Lessee shall fail to pay in full any of the sums due to Public Service in the amount provided for in Schedule A or in the event of a breach by Lessee of any of the terms, conditions or provisions of this Agreement or in the event that Lessee informs Lessor that it will refuse to honor all of its obligations under this Agreement, then and in any of such events the Lessor shall have the right:

(a) to take, retake or enter any premises where any of the Vehicles may be and remove the same without being liable to any suit, action, defense or other proceedings by the Lessee, and to hold, use, sell, lease or otherwise dispose of any of the said Vehicle(s), or to keep said Vehicle(s) idle severally or entirely as Public Service may elect. Such election by Public Service shall have no effect upon Lessee's liability under this Agreement or upon Lessor's rights to damages as otherwise set forth in this Agreement. In the event Vehicle is retaken, it shall be assumed that for the purpose of



this Agreement that Lessee is the sole owner of any property in and about such Vehicle(s), and Lessor may without further notice keep, sell or dispose of any such property without liability in order to satisfy Lessee's obligations pursuant to this lease.

(b) If Lessee or its agents shall fail or refuse to deliver or shall convert or destroy any of the leased property, the Lessor shall have the right at its option as an alternative in place of Paragraph (a) hereof, in addition to its other remedies pursuant to this Agreement to hold the Lessee and its agents liable for the value of said property withheld or destroyed.

**12. REMEDIES:** Upon breach of this Agreement as provided in Article numbered 11 or otherwise, the Lessor, in addition to any other rights otherwise available to Lessor pursuant to this Agreement, shall be entitled to all gains and/or profits prevented and damages sustained, liquidated or unliquidated, including claims and statutes against the Lessee's assets in bankruptcy, reorganization or arrangement proceedings or herein for all purposes, pursuant to other provisions of the United States Bankruptcy Act or in any assignment for the benefit of creditors' proceedings as follows: (a) all sums due and unpaid at the time the Agreement is terminated and reasonable attorney's fees not less than fifteen (15%) percent of the amount due; (b) the total of all sums designated as fixed rental charges set forth in Schedule A hereof, as modified herein by the cost of living clause, etc., which would have to become due under the normal operation of this Agreement from the date of such termination to the date said Agreement would normally have expired had it not been so earlier terminated, less the re-rental value of said Vehicle(s), which said re-rental value is hereby agreed upon to be fifty (50%) percent of the said fixed rental charge which would have become due as set forth in Schedule A, plus reasonable attorney's fees not less than fifteen (15%) percent of the amount due.

In determining said liquidated damages, the parties have made due allowance for the Lessor's investment in buying and/or reconditioning the leased Vehicles, the uncertainty of leasing them to others, cost to Lessor for the period during which they remain idle, or if sold, the uncertainty of the sales price and the Lessor's loss in selling said Vehicle(s), commissions and legal expenses to be paid, etc. Due allowance has also been made for the savings in not furnishing gas, oil, maintenance and other services.

**13. INTEREST AND EXPENSES:** Should Lessee fail to pay duty and promptly any installment of the rent herein reserved or any other sum required to pay by Lessee to Public Service hereunder, Lessee shall pay Public Service interest on such delinquent payments at the maximum lawful contract rate allowed in the jurisdiction in which the Lessee's principal place of business is located, but in no event exceeding Eighteen percent (18%) per annum from the date on which said payment was due until paid, together with all expenses of collection and reasonable attorneys' fees.

**14. FORCE MAJEURE:** Public Service shall incur no liability to Lessee for failure to supply any Vehicle, provide a substitute Vehicle, repair any disabled Vehicle, or provide fuel for the Vehicle(s), if prevented by a national emergency, wars, riots, fires, labor disputes, Federal, State, or local laws, rules, regulations, shortages (local and national), or fuel allocation programs, acts of God, or other causes beyond Public Service's control whether now existing or arising hereafter. Notwithstanding Public Service's inability to perform under these conditions, Lessee's obligations hereunder shall continue.

**15. RENEWAL:** This lease shall be deemed to be and shall be, extended for the further term of one (1) year unless either party, at least 60 days prior to the termination hereof, shall give to the other, notice in writing of an intention to terminate or cancel as of the date fixed for the expiration of the term. In the event of any holding over after the expiration of the lease terms as to any Vehicle covered by this lease, the same shall be construed to be on a week-to-week basis at the same rental as herein described and subject to all of the terms and conditions of this lease Agreement.

**16. NO WARRANTY—ENTIRE AGREEMENT.** PUBLIC SERVICE MAKES NO WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF ANY VEHICLE COVERED BY THIS LEASE OR ITS PERFORMANCE, SUITABILITY OR DURABILITY FOR ANY PARTICULAR PURPOSE. PUBLIC SERVICE SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR LOSS OF LESSEE'S PROFITS, DRIVER'S TIME, LOSS OF OR DAMAGE TO CARGO, LOSS OF BUSINESS OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED BY OR RESULTING DIRECTLY OR INDIRECTLY FROM PUBLIC SERVICE'S FAILURE TO COMPLY WITH THE TERMS AND PROVISIONS OF THIS LEASE, OR RESULTING FROM ANY INTERRUPTION OR CESSATION FOR ANY REASON OF ANY LEASE OR SERVICE PROVIDED FOR HEREIN. THIS LEASE AND THE SCHEDULES AND/OR RIDERS ANNEXED HERETO CONTAIN THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND PUBLIC SERVICE IS NOT BOUND BY ANY COMMUNICATIONS NOT SET FORTH THEREIN. THE LEASE SHALL SUPERCEDE ANY AND ALL PROPOSALS OR AGREEMENTS, WRITTEN OR VERBAL, BETWEEN THE PARTIES HERETO, RELATING TO THE SUBJECT MATTER OF THIS LEASE AND MAY NOT BE MODIFIED, TERMINATED OR DISCHARGED, EXCEPT IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM THE ENFORCEMENT OF THE DISCHARGE, MODIFICATION OR TERMINATION IS SOUGHT.

**17. ASSIGNMENT OF LEASE:** This Agreement shall be binding on the parties hereto, their successors, legal representatives and assigns. Lessee shall promptly notify Public Service in writing prior to all substantial changes in ownership or any material disposition of the assets of Lessee's business. Lessee does not have the right to sublease any of the Vehicle(s), nor to assign this Agreement or any interest therein without prior written consent of Public Service.

**18. CONFLICT WITH APPLICABLE LAW:** This lease is intended for general use throughout the United States and, in the event that any one of the terms or provisions hereof are in conflict with any statute or rule of law in any state or place wherein it may be sought to be enforced, then such provision shall be deemed null and void to the extent that it may conflict therewith, but without invalidating the remaining provisions thereof, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provisions in any other jurisdiction. This lease shall be governed by the laws of the State of New York. This lease shall be binding upon Public Service and Lessee and their respective legal representatives, successors and assigns to the extent that this lease is assignable.

**19. GENERAL:** Article headings hereof are for convenience only, and do not constitute any part hereof and shall not be considered in the interpretation of this Agreement. This Agreement is for the benefit of the parties hereto and except for the rights of any assignee of Public Service, no other person, firm or corporation shall be deemed to have any rights hereunder. If Public Service shall assign its rights only to sums due hereunder and not the entire Agreement, Lessee shall look only to Public Service for performance hereunder and not such assignee. All notices provided for herein shall be in writing and mailed to an officer of Public Service and Lessee at their respective addresses set forth above or at such other addresses designated in writing by either party by registered or certified mail.

This Agreement shall not be binding upon Public Service until executed by its President or Vice President or other duly authorized officer.

LESSEE ACKNOWLEDGES THAT IT HAS READ THIS LEASE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS.

IN WITNESS WHEREOF, each of the parties hereto has caused these presents to be duly executed the day and year first above written.

PUBLIC SERVICE TRUCK RENTING, INC.

Sheldon Electric, Inc.

(Lessor)  
by [Signature] Date 3/29/99  
Name/Title Charles Sommer, President  
Witness \_\_\_\_\_

(Lessee)  
by [Signature] Date 3/29/99  
Name/Title President Michael Pratt  
Witness [Signature]

For value received, and in consideration for, and as an inducement to Public Service entering into the foregoing agreement, the undersigned, each for himself, personally guarantees the performance and guarantees payment to Public Service for all sums due or to become due and all obligations to be performed by the Lessee under the said agreement.

**PUBLIC SERVICE TRUCK RENTING, INC.**  
**Schedule 'A'**

Date: March 18, 1998  
Number: 98-1

Vehicle Domicile: 42-14 Crescent St, LIC, NY  
Servicing Location: 25-61 49 Avenue, Long Island City, NY

Unit Number	Date of Delivery	Term (Years)	Year & Make	Model & Type	Serial #	Mfg. G.V.W.R. Lbs.	License Weight Lbs.	Original Agreed Schedule Value \$	Deprec. Per Month \$	CPI Index	Fixed Charge Per Week \$	Excess Mileage Charge Per Mile \$	Liab. Ins. Adj. Per Month \$	Phy. Dam. Ins. Adj. Month \$
718	3-29-98	4	1997 International	4700 Diesel with 16' body and 3,000lb cap. Two-a-way liftgate	1HTSCAAM2VH446718	25,500 Approx. payload capacity 5,340 lbs.	18,000	42,630.00	427.76	486.2	252.00	0.12	N/A	N/A
<p>Notwithstanding terms and conditions of the Truck Lease and Service Agreement that this Schedule "A" is made a part of, it is understood and agreed between the parties hereto that:</p> <ol style="list-style-type: none"> <li>1. The above fixed charge per week includes 250 miles per week, before the excess mileage charge becomes applicable. Excess miles shall be billed semi-annually.</li> <li>2. Modification to Article #5A, "Adjustment of Charges", shall be limited to seven (7%) percent per year.</li> </ol> <p>(Above charges are included in the fixed charge per month)</p>														

IT IS AGREED THAT PUBLIC SERVICE WILL INSERT THE VEHICLE NUMBER, DATE OF DELIVERY AND SERIAL NUMBER, AND THAT LESSEE AGREES THAT THESE ADDITIONS TO SAID SCHEDULE "A" SHALL NOT MODIFY NOR CHANGE ANY OTHER PROVISIONS HEREOF.

Side 1

PUBLIC SERVICE TRUCK RENTING, INC.  
Schedule 'A'

1. Liability Insurance is provided by Lessee in the following limits:

Bodily Injury \$ N/A per person, \$ N/A per accident.  
Property Damage \$ N/A per accident or Combined Single Limits \$ 1,000,000.00 per accident.  
Physical Damage Responsibility by: Lessee with \$ 1,000.00 Deductible, payable by Lessee.

2. Advance Rental charges: \$1,100.00

3. Radius of Operation: 100 miles.

4. Painting and lettering allowance: \$500.00.

This Schedule "A" (including Side 1 hereof) is hereby made a part of truck lease and service agreement between the parties

DATED: 18 day of March 1999.

PUBLIC SERVICE TRUCK RENTING, INC.

By: [Signature] (Title)

Date: 3/29/99

Witness: \_\_\_\_\_

LESSEE: SHELDON ELECTRIC, INC.

By: [Signature] (Title)

Date: 3/29/99

Witness: [Signature]

Side 2